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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 196 of 2025 and CMP.No.12607 of 2025

CNR: {HCMA011567792024}

1. D. Jayarani
2. U.Hamasalakshmi (Died) 2.G.Ulaganathan
3. U.Mohanbabu
4. Komathi Sudhakar
5. Rekha Sakthivel

Case QR

..Appellant(s)

Vs

1. N. Jayachandran
2. N.Baby Saroja
3. D.Narayanaswamy

..Respondent(s)

Original Side Appeal filed under Order XXXVI Rule 1 of OS Rules read with Clause 15 of Letters Patent to set aside the order dated 28-06-2024 made in Appln.No.4524 of 2011 in OP.No.838 of 2000 on the file of this Court dismissing the same and allow the same ordering to revoke the order of probate dated 26-09-20001 made in OP.No.838 of 2000

For Appellant(s): Mr.Sharath Chandran
For Respondent(s): Mr. T.Mathi for R1 & R2
R3-Refused

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

Challenging the order of the learned Single Judge dismissing the application filed to revoke the Letters of Administration dated 26.09.2001 granted in OP No.838 of 2000, the present appeal is filed.

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2. The following are the brief facts leading to filing of this appeal:

2.a. Originally, OP.No. 838 of 2000 has been filed by the first respondent herein, based on the will dated 22/11/1985, said to have been executed by his mother N.Panchali Ammal. In the said original petition, the respondent was set *ex parte* and the Letters of Administration was granted vide order dated 26/09/2001. The appellants herein are the sisters of the first respondent herein. They have instituted the instant A.No.4524 of 2011 seeking to revoke the Letters of Administration granted on 26/09/2001 on the ground that notices have not been served on them, in fact, in the main OP, wrong address has been deliberately given, therefore, sought to revoke the Letters of Administration.

2.b. On the side of the appellants/petitioners, P.W.1 and P.W.2 were examined and Exs.A1, P2 to P9 and A10 series were marked to show that she was residing in a different address at the relevant point of time when the Original Petition for Letters of Administration was filed by the first respondent. The said documents have been filed to buttress the stand that wrong address has been given in the main original petition. The learned Single Judge, vide the impugned order dated 28.06.2024, dismissed the application on the ground that since the appellants/applicants have given different address on various periods, the respondents cannot found be faulted with. Challenging the said dismissal order, the present appeal has been filed.

3. The learned counsel for the appellants submitted that the address given in the original petition is not correct as the first appellant was living separately

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at Amanjikarai from her in-law's house from the date of her marriage, this fact was not taken into consideration. Therefore, merely because they have shifted the house several times, it cannot be said that they avoided summons. In fact, when the first summon was served, the first appellant was residing in a different address as could be seen under Ex.A1, whereas, notices have been taken to Choolai address. As per Exs.A1, P2 and other documents, at the relevant point of time the first appellant was residing in Aminjikarai, therefore, on this ground alone, the Letters of Administration can be revoked. Furthermore, it is the contention that though the Will has been projected by the respondents, the said Will has not been proved in the manner known to law as no attesting witnesses were examined, therefore, the very proceedings in which the Letters of Administration obtained was defective in substance. In the absence of examination of any of the attesting witnesses, the Will itself cannot be admitted in evidence, however, the learned Single Judge has not considered this aspect, therefore, the appellants are certainly entitled to seek for revocation. Admittedly, a suit for partition is also filed in the year 2010 itself by the appellants, only in that proceedings they came to know about the *ex parte* order granting Letters of Administration in the original petition, therefore, the appellants are certainly entitled to seek for revocation of Will.

4. In support of his submission, he relied upon the judgment of *V.Padmanabhan vs. R.R.Shah and 4 others* reported in *1988-1-L.W.1* wherein, the Division Bench of this Court has held that as the summon sent was not

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served on the defendant and as he was not aware of the proceedings, he can certainly claim that he was prevented from appearing by sufficient cause when the suit was called for hearing. Similarly, relied upon a judgement of this Court in *Gita Alias Gita Ravi vs. Mary Jenet James alias M.J.James and others* reported in *1995-2-L.W.831*, wherein, it was held that that explanations (a) to (e) to Section 263 of the Succession Act were not exhaustive of the circumstances for revoking or annulling a grant for "just cause", indicating that the explanations were only illustrative. Reliance was also placed on judgment of the Supreme Court in the case of *S. Sundaram Pillai and others vs. V. R. Pattabiraman and others* reported in (1985) 1 SCC 591, to contend that the explanation appended to a provision only explains the meaning and intendment of the statutory provision.

5. The learned counsel for the respondents opposed the appeal on the grounds as follows:-

5.a. O.P. No. 838 of 2000 was an uncontested, non-contentious petition in which no caveat was entered. Under Section 281 of the Indian Succession Act, 1925 and Order XXV Rules 4 and 5 of the Madras High Court Original Side Rules, compliance by way of an attesting witness affidavit in Form No. 56 is sufficient, and formal oral examination of an attesting witness under Section 68 of the Indian Evidence Act, 1872 and Section 295 of the Succession Act is triggered only when proceedings become contentious. Once granted by a competent court, Letters of Administration operate as a judgment *in rem* and

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remain conclusive unless revoked on established grounds under Section 263 of the Succession Act.

5.b. In this regard, reliance was placed on *Lynette Fernandes v. Gertie Mathias* ((2018) 1 SCC 271), which holds that revocation under Section 263 is governed by the three-year limitation under Article 137 of the Limitation Act, 1963 and should not unsettle long-standing grants on technicalities where fraud is not pleaded or the genuineness of the Will is not disproved.

5.c. Notice was sent to the 1st Appellant's marital home at No. 6, T.K. Mudali Street, Choolai, Chennai which is the address reflected in her marriage invitation and thereafter, paper publication was effected, which under Order V Rule 20(2) of the Code of Civil Procedure, 1908 is as effectual as personal service. Evidences in the original petition would indicate that the 1st appellant shifted across multiple addresses due to her husband's loan troubles, and that the parties' father, both an attesting witness and respondent No. 4 in the O.P. was alive when the petition was filed and until 06.03.2002, making complete ignorance implausible. Furthermore, registration of the Will in the year 1985 carries a presumption of due execution under Section 114 of the Indian Evidence Act, 1872, constitutes constructive/public notice, and was met with no caveat under Section 284 of the Succession Act. The sole ground pressed before the Learned Single Judge was alleged false suggestion/concealment under Section 263(b) regarding the address. Providing the last known marital address does not amount to a deliberate, material misrepresentation intended to deceive

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the Court, and no "just cause" under Section 263 was established.

5.d. The revocation application (18.04.2010) was filed after a delay of nearly nine years from the grant (26.09.2001), during which the estate was administered and third-party rights may have arisen. The 1st Respondent's reply notice dated 10.12.2008 explicitly mentioned the Will, followed by a rejoinder on 20.01.2010 and partition suit O.S. No. 3258 of 2010 (prepared in February 2008 and filed in February 2010). The claim that knowledge arose only upon filing of the written statement on 07.10.2010 is contradicted by the revocation application having been filed on 18.04.2010, and even from December 2008 there was an unexplained delay of over 16 months.

5.e. Cross-examination of PW-1 exposed material contradictions regarding her residential addresses, employment/service timelines, alleged councillor status, her mother's signature and mortgage deed, and Ex. A-1 (voter ID), while a fresh set of pleadings was filed on 29.03.2019 in the guise of a "clean copy" without leave of Court. In addition, pleas alleging non-examination of attesting witnesses, lack of testamentary capacity, or undue influence/force were not raised before the learned Single Judge and cannot be raised for the first time in appeal. In support of his submissions, he relied on *Philo Peter v. Divyanathan* (AIR 1989 Mad 111 (DB)), *S.V. Ramakrishnan v. P.R. Sethuraman* (2012 (2) MLJ 12 (DB)), *Jamuna Bai v. Surendrakumar* (AIR 1995 MP 274), and *Bindra Singh v. Lal Singh* (AIR 1978 SC 1288).

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6. In light of the above, now the point that arises for consideration in this appeal is

(a) Whether the appellant has made "just cause" for revoking the Letters of Administration granted on 26.09.2001 in OP.No.838 of 2000.

Point (a)

7. The main contention of the appellants is that in the original petition, notice has not been served on them and wrong address has been given. According to the appellant No.1, she was not residing in the address mentioned in the Original Petition. To buttress his submission, Exs A1, P2 to P9 and A10 series are relied upon. On perusal of the original petition, it would indicate that her address was given as No.6, T.K.Mudali Street, Choolai, Chennai. Similarly, the 2nd respondent therein/sister of the first appellant namely Hamsalakshmi's address was also given as number 6, T.K. Mudali Street, Choolai, Chennai and the respondents 1 and 4's addresses were given in different numbers, be that as it may.

8. The contention of the appellants is that the address given in the original petition is not correct. Though it is the address of her mother-in-law, she was not residing with her mother-in-law and she was residing in a different address at the relevant point of time. The Original Petition was filed in the year 2000 and presented before the court on 01.02.2000 and represented on 06.09.2000. Endorsement on the petition shows that notice to the appellants' address was not served twice. In fact, it is recorded as "no such person". This fact clearly shows

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that notice was never served on the appellants. Therefore, immediately substituted service was ordered to be effected in a regional vernacular paper, namely Makkal Kural. Based on that, the appellants were set *ex parte* and *ex parte* evidence was adduced on 21.09.2000, wherein, the first respondentpetitioner himself was examined as PW1 and through him Exs.P1 to P5 were marked. Thereafter, the order granting Letters of Administration came to be passed by this Court on 26.09.2001. Virtually, it is an ex parte order.

9. The very endorsements made in the case bundle clearly shows that notice has not been served on the appellants. The appellants have filed 10 documents to substantiate their stand that no notices whatsoever was served on them. Ex.A1/Voter list of the first appellant clearly shows that her address is No.15, Anna Avenue, Aminjikarai (West), Chennai and the voter list has been issued on 24.10.2000. Even before the Court notice was sent in the year 2001, the first appellant was residing in a different address in Aminjikarai. Similarly, Ex.P2 passbook clearly shows that she was residing in Arumbakkam later. The other appellant, namely Hamsalakshmi's address clearly shows that she was residing in Bangalore. Electoral card was issued on 05.01.1996 much prior to the initiation of the original petition by the first respondent. Ex.P4/voter is also issued in respect of Hamsalakshmi and shows that she was residing in Bengaluru. Similarly, Exs.P5 and also P6 were also filed in this regard. Though they have changed the address later, the fact remains that when the notices were sent in the original petition, both the appellants referred above were not residing

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in the said address and they were residing in different addresses. Merely finding that different address have been given, the learned Single Judge has held that it is improbable to believe their contention, however, these documents have not even gone into by the learned Single Judge and these documents clearly show that appellants were not even served. The endorsements in the main original petition shows that since on two notices being not served on the appellants as "no such person", substituted service in a local daily was ordered and thereafter the matter proceeded *ex parte*. Thus, we are of the view that unless the notices have been properly served on the appellants, the appellants are certainly entitled to seek for revocation since the Will normally will deviate the right of succession and the opportunity has to be given to the appellants. **(See: Manibhai Amaidas Patel v. Dayabhai Amaidas Patel, (2005) 12 SCC 154).**

10. The learned counsel for the respondents 1 and 2 relied on the judgment of this Court in ***Philo Peter and anr vs. Divyanathan and others*** reported in ***(1998) 2 MLJ 1***, wherein, it has held as follows:-

> *4. Before construing the scope of Section 295 of the Indian Succession Act, it Is better to refer Order 25 of the Rules of the Original Side of the High Court, Madras of 1956. It relates to the Testamentary and Intestate matters and prescribes a procedure for granting Probate or Letters of Administration or succession certificate. It contains separate provisions for contentious and non-contentious matters, relating to Wills. A Will may be proved either in common form or in solemn form. In a case where the petitioner wants to prove the Will in common form, it is enough if he files the Will along with the affidavit of attesting witness. There is a provision for issuing public notice and also notice to the interested parties. In such cases, anybody intending to oppose the issue of Probate or Letters of Administration, may enter caveat under Rule*

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> *51 of Order 25 of the Original Side Rules and file an affidavit in support of the caveat under Rule 52 within eight days of entering the caveat stating the grounds of objection to the grant of Probate or Letters of Administration. On such contest being made, the proceeding, which was originated by the original petition, is converted into T.O.S. In such a case, the plaintiff is bound to pay the required court-fee as provided in Article 11 (k) of Schedule II of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. Therefore, here, we find that there is a definite procedure prescribed for converting the petition into a regular suit, in which case the liability for payment of court-fee is automatically attracted.*

11. Though the said judgment deals with the procedure under Order XXV Rules 4 and 5 of Madras High Court Original Side Rules, we are of the view that mandatory provisions in bringing a particular document as evidence cannot be dispensed with namely the examination of attesting witness.

12. We also notice that even while granting *ex parte* order of Letters of Administration, the learned Single Judge has not gone into the merits of the case. In fact, none of the attesting witnesses have been examined. Much emphasis has been made by the learned counsel for the respondents that as per Order XV, Rules 4 and 5 of Rules of the High Court, Madras, Original side that there is no requirement for examination of attesting witnesses in non-contentious matter.

13. Order XV, Rule 4 and 5 reads as follows:

> *[Rule 4] Application for probate shall be made by a petition with the Will annexed, accompanied, if the Will is not in English by an official translation thereof in English; such application shall be in Form No. 55 or as near thereto as the circumstances of the case may permit and shall be accompanied by:*
> *(a) a vakalat or appointment signed by the petitioner, unless he*

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appears in person.
(b) an affidavit of one of the attesting witnesses if procurable, in Form No. 56.
(c) a notice to the Collector (vide Section 55 of the Court Fees and Suits Valuation Act XIV of 1955), in Form No. 57 signed by the petitioner or his advocate, and
(d) except in the case of applications made by the Administrator-General of Madras the affidavit of assets prescribed by Sec. 55 of Madras Act (XIV of 1955) and a copy of such affidavit.
The notice shall as soon as the petition is admitted be signed by the Registrar, and sent by him to the Collector. The copy of the affidavit of assets shall also be sent by the Registrar to the Collector.
The affidavit of assets shall, in addition to particulars given in Annexure A, Part I of Schedule III of the Court Fees Act, give as far as possible particulars of the survey or patta number of all lands, and shall include the rents of all lands or houses that have accrued since the date of the death of the deceased and of the debt with the names of the creditors and the dates of debts.
[Rule 5] Every application for letters of administration or for letters of administration with Will annexed shall be made by petition in Form No. 58 or 59 or as near thereto as the circumstances of the case may permit, and shall be accompanied by Annexures [5][(a), (c) and (d) or (a), (b), (c) and (d)] mentioned in the last preceding rule.
In an application for grant of Letters of Administration O XXV Rule 5 read with Form 58 of the Madras High Court Original Side Rules required compliance and thus, the legal heir's ought to have been impleaded in the application filed by the Administrator and notices ought to have been issued to them. The permission to settle the property exclusively in favour of the grandson cannot be granted in the absence of any notice to the legal heirs.

14. The above provisions deals with the filing procedure, the manner in which the application has to be filed in testamentary matters. Order XXV Rule 51 deals with the contentious proceedings wherein it says that any person intending to oppose the issue of grant of probate or letters of administration may enter a caveat. Once a caveatable interest is shown, the matter will be converted

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as Testamentary Original Suit and the matter will be decided. Order 25 Rules 4, 5 and 51 referred above sets out the procedure for filing such application. The above provisions will not dispense with the mandatory procedures contemplated under Section 68 of the Indian Evidence Act (Section 67 of Bharathiya Sakshya Adhiniyam, 2023) or Section 63 of the Indian Succession Act. **(See: Ramesh Verma v. Lajesh Saxena, (2017) 1 SCC 257; Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91).** Merely because the procedures set out for filing applications with affidavit of attesting witnesses, in our view, the same will not dispense with the proof of execution of the document.

15. As per Section 68 of the Indian Evidence Act, if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. **(See: Jagdish Chand Sharma v. Narain Singh Saini, (2015) 8 SCC 615).** The proviso to Section 68 of the Evidence Act says that examination of attesting witness is mandatory in the Will also, though execution is admitted. Therefore, the mandatory procedure to admit such attested document, cannot be dispensed with by mere procedural aspect of filing affidavit of attesting witnesses in non-contentious proceedings invoking Order XXV Rules 4 and 5 of Rules of the High Court, Madras, Original side. When the law does not permit any document to be used as evidence unless one attesting witness is called for the purpose of proving its execution if the

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attesting witness is alive and such mandatory provision cannot be dispensed with merely because the matter has not been contested by the respondents. The judgment of the Hon'ble Supreme Court in the case of ***Ramesh Chand (D) through LRs vs. Suresh Chand and another*** reported in ***2025 INSC 1059*** is of relevance on this point. The relevant paragraph of the said Judgement is extracted hereunder:

> *"27.....There is not an iota of discussion about the validity of the Will as contemplated under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 and yet, the validity of the Will has been upheld. This is contrary to law. Even the High Court, while evaluating the validity of the Will, has gone on a different tangent and has erroneously held that the requirement of examining the attesting witnesses springs into action only in cases of disputes between legal heirs. Such an observation is quite contrary to law, for Section 68 of the Evidence Act makes it mandatory to examine at least one of the attesting witnesses of the Will...."*

16. We have also perused the evidence, the PW1 himself has examined and the so-called affidavit of one of the attesting witness has also been filed. Except filing of the affidavit of attesting witnesses, he has not been called upon to prove its execution. The mandatory requirement has not been complied with and thus, granting the Letters of Administration in our view was defective in substance, which is one of the "just cause" to revoke the Letters of Administration. ***(See: Anil Behari Ghosh v. Latika Bala Dassi, AIR 1955 SC 566; Manibhai Amaidas Patel v. Dayabhai Amaidas Patel, (2005) 12 SCC 154).*** Though explanation under Section 263 of the Indian Succession Act provides certain circumstances as a "just cause", it is well settled that the

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illustrations appended to Section 263 are only illustrative and not exhaustive. Admittedly, in this case, notice itself was not served on the Class I legal heirs and the same has been clearly established on the evidence. In ***Basanti Devi Vs. Raviprakash Ram Prasad Jaiswal*** reported in ***2008 (1) SCC 267,*** *the* Hon'ble Supreme Court has held that the person who is aggrieved of letters of administration and having no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. That apart, the mandatory requirements of examining the attesting witness to admit the Will as evidence has not been complied. Hence, we are of the view that appellants have made just cause for revocation of the Letters of Administration granted in the original petition. Accordingly, these points are answered accordingly.

17. In view of the above, the order of the learned Single Judge dismissing the application filed for revocation of Letters of Administration has to be necessarily interfered with and accordingly this original side appeal stands allowed. No costs. Consequently, connected miscellaneous petition stands closed. The appellants may enter caveat and file affidavit, on such affidavit being filed, the same shall be converted as Testamentary Original Suit and the suit shall be disposed of expeditiously.

(N.S.K.,J.) (G.K.M.,J.)
23-11-2026

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N.SATHISH KUMAR, J.
AND
GK.MUTHUKUMAAR, J.

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